

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE LORAZEPAM & CLORAZEPATE
ANTITRUST LITIGATION

MDL Docket NO. 1290
Misc. NO. 99ms 276 (TFH/JMF)

This order applies to:
ADVOCATE HEALTH CARE; ST. CHARLES
HOSPITAL AND REHABILITATION CENTER;
DIK DRUG COMPANY and HARVARD PILGRIM
HEALTH CARE, INC., on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MYLAN LABORATORIES, INC; MYLAN
PHARMACEUTICALS, INC.; UDL LABORATORIES,
INC.; CAMBREX CORPORATION; PROFARMCO,
s.r.l; GYMA LABORATORIES OF AMERICA, INC.
AND SST CORPORATION,

Defendants

FILED

JAN 25 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

Judge Hogan has ordered defendants to produce the hard drive from the computer that was used by Don Hill whom plaintiff believes wrote a "White Paper." The parties cannot agree as to how the search of that hard drive should be conducted once the defendants surrender it to plaintiff in accordance with Judge Hogan's order. Since they cannot agree, I will order that the search be conducted in the following manner:

Plaintiffs have retained a forensic, computer expert. Plaintiffs shall create for that expert a written, detailed description of the "White Paper" to facilitate the expert's search. The expert should rely on this description in conducting the following search.

The expert shall first attempt to retrieve all documents from the hard drive which have been

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deleted, either purposefully or inadvertently. If any such documents are retrieved, the expert shall examine each of them to see if any of them is either the "White Paper" or refers to any document which could be the "White Paper." The expert will not disclose the contents of any document whatsoever to any one other than me. The expert shall make available to me any document which he believes is the "White Paper" or which he believes refers to the "White Paper." I will examine these documents.

If this process fails to yield either the "White Paper" or any document referring to it, I will hear from counsel as to what, if anything, should then be done, including whether an evidentiary hearing should then be held or whether additional searches of the entire hard drive should be done and, if so, how they should be conducted.

If at all possible, the expert shall complete this phase of his work by January 31, 2001 and report to me his or her findings one week thereafter.

Judge Hogan has also referred to me a dispute concerning a claim of attorney client privilege and work product privilege which was asserted as to questions asked during a deposition of Roger Foster and as to certain documents. As to the latter, by January 31, 2001, the party claiming the privilege shall deliver to my chambers for an *ex parte* examination all documents as to which a privilege is claimed. That submission must be accompanied by a privilege log which fully complies with Fed. R. Civ. 26(b)(5). The party claiming the privilege shall serve the privilege log but not the documents themselves upon all opposing parties.

SO ORDERED


JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: 1/25/01